

**State Board of Education
May 18, 2010
Item H**

Team: Integrated Support for Learning

Discussion Topic: Emergency Rules for Special Education on Restraint and Seclusion

Statutory Authority:

Individuals with Disabilities Education Act of 2004 (IDEA 2004); 16 V.S.A. §2971-2974; S.B.E Rules 2360-2369, 4314; and 3 V.S.A. §844

Background Information:

The appropriate use of restraints and seclusion is an important issue affecting many students in Vermont schools and currently there is no statute or rule regulating their use. Last year a committee of advocacy groups, department staff and school district staff worked to create language for rules on the use of restraints and seclusion on students in public schools. Bills were introduced in the legislature both this year and last year that would have imposed restrictions on the use of restraints and seclusion on students in public and independent schools. Following hearings, the legislature decided not to pursue legislation at this time due, in part, to the department's representation that rules would be written and put into effect by the beginning of the school, if possible. The department is therefore seeking to have emergency rules adopted so that they will be in effect at the beginning of the school year. The attached draft language is very preliminary; meetings with appropriate stakeholders will be held to prepare final language for the emergency rules.

Purpose of Discussion:

Preparation for vote at the June 21, 2010 meeting

Cost Implications:

There are no anticipated increases in cost associated with these rules changes.

Staff Available:

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PROPOSED STATE RULES FOR THE USE OF RESTRAINT & SECLUSION IN SCHOOLS

March 10, 2010

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STATEMENT OF PURPOSE (H. 400)

To promote positive behavioral intervention and supports in schools, reduce the use of physical restraint, and prohibit the use of mechanical, chemical, prone supine physical restraint and seclusion as methods of addressing challenging student behavior.

APPLICABILITY

(1) These rules are applicable to all public preschool, elementary and secondary schools, approved independent schools and approved tutorial programs where students are enrolled and receive services, in whole or in part, at public expense.

(2) Nothing in these rules shall be construed to affect any private school or home school that does not receive, or does not serve students who receive, support in any form from any program supported, in whole or in part, at public expense.

[Combined Federal Language & H. 400]

DEFINITIONS

(1) "Positive behavioral interventions and supports" means an approach to preventing and responding to challenging behavior that:

(a) Is proactive and instructional, rather than reactive.

(b) Can operate on individual, group, classroom, or school wide levels.

(c) Includes a system of continual data collection.

(d) Relies on data-driven decisions.

(2) "Behavioral intervention plan" means a plan that details strategies to address a student=s behavior before, during, and after rule-breaking or other inappropriate behavior. [Model Policy Language] The plan may include positive strategies, program or curricular modifications, and supplementary aids and supports required to address problem behaviors.

(3) "Functional behavioral assessment" means the analysis of a student=s behavior patterns before, during, and after rule-breaking or other inappropriate behavior for the purpose of guiding the development of a behavioral intervention plan. [Model Policy Language]

OR

(3) "Functional behavioral assessment" means a systemic process for identifying the events that trigger and maintain problem behaviors in an educational setting. A functional

behavioral assessment will describe specific problematic behaviors, report the frequency of the behaviors, assess environmental and other setting conditions where problematic behavior occurs, and identify the factors that are maintaining the behavior over time. Data collected during a functional behavioral assessment shall be used to develop and monitor the effectiveness of a behavioral intervention plan.

(5) “Chemical restraint” means the use of any [drug] [medication] or substance to restrict a student=s movement or to limit a student=s sensory or motor functions. [Model Policy Language w/Revisions]

OR

(5) “Chemical restraint” means a drug or medication used on a student to control behavior or restrict movement that is not:

(a) Prescribed by a licensed physician for the standard treatment of a student’s medical or psychiatric “Condition”; and

(b) Administered as prescribed by the licensed physician.

[Federal Language]

(6) “Mechanical restraint” means the use of any device or object that restricts a student=s movement or limits a student=s sensory or motor functions.

The term does not include -

(a) Devices used pursuant to the direction of a health care professional to maintain body alignment or support or to limit sensory stimuli, when used in the manner prescribed;

(b) Functional positioning devices used for physical or occupational therapy;

(c) Seat belts in wheelchairs or on toilets and a safety harness used on a bus for balance and [safety].

[Model Policy Language with revisions]

(7) “Physical restraint” means the use of physical force to prevent an imminent and substantial risk of bodily harm to the student or others.

Physical restraint does not include

(a) The brief holding by an adult to calm or comfort;

(b) The minimum contact necessary to escort a student from one place to another;

(c) Hand-over-hand assistance with feeding or task completion; or

(d) Techniques prescribed by a qualified medical professional for reason of safety or for therapeutic or medical treatment. [H. 400]

OR

(7) “Physical restraint” means a personal restriction that immobilizes or reduces the ability of a student to move his or her arms, legs, [torso] or head freely. Such term does not include physical escort.

[Federal Language citing Children’s Health Act Definition]

(8) “Prone physical restraint” means holding a student face down on his or her stomach, usually on the floor using physical force [or mechanical restraint] for the purpose of controlling the student=s movement. [H. 400]

(9) “Supine physical restraint” means holding a student, usually on the floor, face up on his or her back through physical force or mechanical restraint for the purpose of controlling the student=s movement. [TASH]

(10) “Physical escort” means touching or holding a student without the use of force for the purpose of directing movement from one place to another. [H. 400]

(11) “Seclusion” means the confinement of a person in a room or area from which the person is physically prevented or reasonably believes he or she will be prevented from leaving by use of a lock or other means. The use of a time-out room for brief periods of time is not seclusion. [H. 400]

(12) “Time-out room” means a designated room used to separate a student from others for a brief period of time for the purpose of preventing or stopping harmful behavior or limiting its intensity or to enable a student to regain composure and return to a class or other activity. [Model Policy Language]

(13) “Emergency” means a situation in which a student=s behavior presents an imminent, [probable] and substantial risk of bodily harm to the student or others.

(14) “Substantial risk” means a serious, imminent threat of bodily harm where there is an ability to enact such harm. Substantial risk shall exist only if all other less restrictive alternatives to diffuse the situation have been exhausted or failed, or the level of risk prohibits exhausting other means

(15) AIndividual safety plan” means a plan created only for a child whose behavior could reasonably be predicted to pose a danger to the student or others. An individual safety plan is not the same as a behavioral intervention plan designed to teach alternative skills to a student who has demonstrated a pattern of inappropriate behavior that interferes with learning and positive social interaction with others.

(16) “Informed Parental Consent” means a parent or guardian has been fully informed of all information relevant to the activity for which consent is being sought. The parent or guardian agrees in writing to the carrying out of the activity and that giving consent is voluntary and may be revoked at any time. [IDEA]

(17) “Student” means a student enrolled in a school as defined in paragraph (18), except that in the case of a independent school or approved tutorial program, such term means a student enrolled in such a school or program that receives support, in whole or in part, directly or indirectly, with public education funds.
[Do we need to add EEE or Head Start?] [Federal Language]

(18) “School” means any entity that is a public school preschool, elementary school or secondary school, approved independent school or approved tutorial program that
(a) Serves students as a day or residential program; or

(b) Receives or serves students who receive in any form from any program supported, in whole or in part, directly or indirectly, at public expense.

[Federal Language Modified]

(19) “Aversives” means the deliberate infliction of physical and/or emotional pain and suffering, for the purpose of changing or controlling a student’s behavior. Aversives include, but are not limited to, techniques such as hitting, pinching, visual screening [?]; forcing a [student to inhale or ingest noxious substances, sensory deprivation, depriving a child of food, use of a toilet, or other health- sustaining necessities. [APRAIS, In the Name of Treatment]

OR

(19)) “Aversives” means a technique of behavior modification causing avoidance of a thing, situation, or behavior by using unpleasant or punishing stimulus. [The American Heritage Medical Dictionary]

(20) “Challenging Behavior” means behaviors that occur frequently or chronically or of such severity that are [not responsive to] [resistant to] supports or interventions available to all students.

RESTRAINT AND SECLUSION; PROHIBITIONS:

(1) School personnel shall be prohibited from imposing on a student any of the following as defined in rule _____:

- (a) Mechanical restraint,
- (b) Chemical restraint,
- (c) Prone physical restraint,
- (d) Supine physical restraint,
- (e) Physical restraint or escort that restricts breathing, communication, or that causes unnecessary pain,
- (f) Aversives that that compromise health and safety, and
- (g) Seclusion.

(2) Physical restraint shall not be used:

- (a) For convenience of staff;
- (b) As a substitute for an educational program;
- (c) As a form of discipline or punishment;
- (d) As a substitute for inadequate staffing; or
- (e) As a substitute in staff training in positive behavior supports and crisis intervention and prevention.

[Modified Federal Language]

(3) The use of physical restraint or seclusion, as a planned intervention, shall not be written into a student’s education] plan; [individual safety plan], behavioral intervention plan, Section 504 plan, or individual education program (IEP). [Federal Language]

(4) Local education agencies and schools may have policies and procedures for the

use of physical restraint in school safety plans, provided such plans are not specific to an individual student.

[Federal Language]

EMERGENCY PHYSICAL RESTRAINT [OR SECLUSION]

- (1) Emergency physical restraint may be used only:
 - (a) When a student's behavior poses an imminent and substantial risk of physical injury to the student or others;
 - (b) Less restrictive interventions would be ineffective in stopping such imminent danger of physical injury; and
 - (c) In accordance with a school-wide crisis plan [or individual safety plan].
- (2) Such restraint [or seclusion] is imposed by school personnel trained [and certified by a State-approved training program], or where, in the rare and clearly unavoidable circumstance, when trained personnel are not immediately available due to the unforeseeable nature of the emergency circumstance.
- (3) Such restraint [or seclusion] is imposed by school personnel who-
 - (a) Continuously monitor the student face-to-face; or
 - (b) If school personnel safety is significantly compromised by face-to-face, are in direct visual contact with the student.
- (4) Such restraint shall be terminated as soon as –
 - (a) The student demonstrates significant physical distress indicating a possible need for emergency medical assistance; or
 - (b) The student's behavior no longer poses an imminent danger of physical injury to the student or others;
 - (c) Less restrictive interventions would be effective in stopping such imminent danger of physical injury.
- (5) The student and any school personnel shall be evaluated and monitored for the remainder of the school day on which emergency physical restraint [or seclusion] was imposed.
- (6) If a school does not follow the school-wide crisis plan [or individual safety plan], a parent may request at public expense:
 - (a) An independent functional behavioral assessment by a qualified evaluator;
 - (b) An [individual safety plan] behavioral intervention plan developed by a qualified behavior specialist; or
 - (c) Technical assistance from an individual or organization with recognized expertise in positive behavior interventions and supports.

[Combined Sources]

DOCUMENTATION AND REPORTING

- (1) Each and every use of emergency restraint [or seclusion] and the reason for each use shall be-
 - (a) Documented in writing on a State-approved form;
 - (b) Reported to the building administrator immediately;

- (c) Reported to the student's parents or legal guardians verbally or electronically immediately, or as soon after as is reasonable, and in no case later than twenty four hours after the event and shall document each instance of notification; and
- (d) Provided in writing to the parent or guardian within [24 hours] [one day] for each use.
- (2) Each school or program shall maintain records of each incident when physical restraint [or seclusion] was used. The record shall include:
 - (a) The name, age, gender and grade of the student;
 - (b) The date and time that restraint was used;
 - (c) The location where the restraint [or seclusion] occurred;
 - (d) The names of the person(s) who imposed the restraint;
 - (e) The type of restraint used;
 - (f) The duration of the restraint;
 - (g) Whether the student had a behavioral intervention plan [or individual crisis plan];
 - (h) Whether the child is on an IEP or Section 504 plan; and
 - (i) Injuries to student or staff sustained or deaths as a result of the restraint.
- (3) The use of restraint [or seclusion] shall be reported to the superintendent or designee whenever:
 - (a) A staff member has engaged in the use of restraint ____ number of times;
 - (b) There is injury to staff or student or death;
 - (c) Physical restraint has been used for more than ____ minutes;
 - (d) Any student has been restrained three or more times per school year;
 - (e) Any student restrained who is not on a behavioral intervention plan;
 - (f) Seclusion or any prohibited restraint or restricted form of restraint for a given student is used; or
 - (g) A pattern of restraint [or seclusion] that indicates that interventions used are not successful.
- (4) The use of restraint [or seclusion] shall be reported to the Department of Education [for technical assistance] whenever:
 - (a) There is injury to staff or student or death as a result of the restraint;
 - (b) Physical restraint has been used for more than ____ minutes;
 - (c) Five or more children not on a behavior intervention plan have been restrained; or
 - (d) Seclusion, any prohibited restraint, or restricted form of restraint for a given student has been used.

DEBRIEFING FOLLOWING USE OF PHYSICAL RESTRAINT [AND SECLUSION]

- (1) [Within 72 hours] after the imposition of emergency physical restraint [or seclusion], all school personnel involved in the physical restraint [or seclusion] upon a student and appropriate supervisory or administrative staff shall participate in a debriefing, which shall include:
 - (a) Documentation of the antecedents to restraint [or seclusion]
 - (b) Prevention planning;

- (2) Parents shall receive advance notice of the debriefing session and shall be provided the opportunity to [participate in] [attend] the session. [Federal Language]

OR

- (1) Following each incident of emergency physical restraint [or seclusion], the school shall implement follow up procedures that include:
- (a) Reviewing the incident with the student to address the behavior that precipitated the use of emergency restraint or seclusion;
 - (b) Reviewing the incident with the staff person(s) who administered emergency restraint [or seclusion] to discuss whether proper restraint procedures were followed;
 - (c) An opportunity for parents to participate in the review of an incident of emergency physical restraint [or seclusion];
 - (d) Consideration of whether any follow-up is appropriate for the students who witnessed the restraint; and
 - (e) Determining, in consultation with the parent or guardian, any specific follow up actions to be taken. [Combined Sources]

TIME OUT ROOMS

- (1) A time-out room may be used to help a student to gain composure and may not be locked in any way and may not be used for staff convenience or as a student punishment. A time out room shall be:

- (a) Large enough to permit safe movement;
 - (b) Adequately lit, heated, ventilated and free of sharp or otherwise dangerous objects;
 - (c) Permit safe entry and exit and permit the student to leave at any time; and
 - (d) Monitored at all times by an adult; and
 - (e) In compliance with all fire and safety codes.
- [Model Policy Language]

ANNUAL NOTIFICATION

- (1) Annually, before the beginning of the academic year, each school shall inform all school personnel, parents and legal guardians of students enrolled in a public school, approved independent school or approved tutorial program of the policies pertaining to the use of restraint, seclusion and time out and the intent to emphasize the use of positive behavioral intervention and supports and its intention to avoid the use of physical restraint to address challenging student behavior; [Modified Federal Language]

COMPLAINTS AND INVESTIGATIONS

- (1) A parent or school personnel may file a complaint regarding the use of [an individual crisis plan], restraint, seclusion, or time out at any time on a student.
- (2) The complaint shall be in writing using a State-approved form:
- (a) If the person filing the complaint is unable to submit the complaint in written form [need better language], the recipient of the complaint shall complete the form based on the verbal complaint.

- (3) All complaints shall be investigated and findings issued within _____ days;
- (4) Investigations of complaints [shall be] [may be] first directed to the principal of the school or [director] [administrator] of the program in which the student participates;
- (5) Unresolved complaints may be directed to the superintendent of the local education agency where the student resides [in accordance with the school board's established complaint process];
 - (a) A student on an IEP or Section 504 plan may use this process or any of the dispute resolution options available under rules to resolve his or her complaint.
- (6) Unresolved complaints may be directed to the Department of Education [or other identified resource such as a special committee established to provide technical assistance in the area of effective and proactive behavior management]. *[This needs more work] [Source Workgroup]*

REFERRAL TO THE EDUCATIONAL SUPPORT TEAM, SECTION 504 TEAM OR IEP TEAM

- (1) A meeting regarding a student's behavior may be requested at any time by the parent or school personnel;
- (2) A student who demonstrates a recurring pattern of challenging behavior that has been [not responsive] [resistant] to interventions and supports available to all students shall be referred to the educational support team, individualized education planning team or Section 504 team for a determination as to whether a functional behavioral assessment and/or behavioral intervention plan is needed to address the student's challenging behavior.
- (3) The educational support team, individualized education planning team or Section 504 team shall include [appropriate school personnel], the parent or guardian and, the student, when appropriate. *[Need to more clearly identify participants]*
- (4) Prior to a meeting, the parents shall be informed in writing [using parent centered strategies] of
 - (a) The concerns regarding the student's behavior;
 - (b) School policies regarding behavior;
 - (c) Information about parent rights in special education and under Section 504; and
 - (d) The purpose of the meeting (FBA or BIP).
- (5) Meetings regarding a student's behavior may be requested at any time by the parent or school personnel; and shall be scheduled at mutually agreeable times and places; and
- (6) All meetings shall be scheduled at mutually agreeable times and places.
[Source Work Group]

FUNCTIONAL BEHAVIORAL ASSESSMENTS

- (1) Any student referred to the educational support team, individualized education planning team or Section 504 team shall receive a functional behavioral assessment to determine the cause of the behavior;
- (2) A functional behavioral assessment shall identify factors prior to, during and after the challenging behavior to determine the function of the behavior, such as
 - (a) Attention from peers or adults;
 - (b) Automatic reinforcement;
 - (c) Rewards to access activity or tangible reinforcement;
 - (d) Escape or avoidance of stimuli or activity;
- (3) Any functional behavioral assessments shall be conducted by a qualified professional who is trained and experienced in conducting functional behavioral assessments.
 - (a) The qualifications of those who may conduct behavioral assessments shall be determined by State board of education rule.
- (4) A functional behavioral assessment shall be used as the basis for the development of a behavioral intervention plan created by the student's team.
[Source Work Group]

BEHAVIORAL INTERVENTION PLANS

- (1) A behavioral intervention plan shall be developed for each student who demonstrates a pattern of challenging behavior and it shall include:
 - (a) The specific behavior to be addressed by the plan or intervention;
 - (b) Positive behavioral [intervention] [strategies] and supports needed to teach the student the skills necessary to replace the behavior;
 - (c) A specific timeline for periodically assessing the effectiveness of the interventions in the plan and to make revisions as necessary;
 - (d) The data to be collected to assess the effectiveness of the interventions in plan; and
 - (e) The person responsible for monitoring the implementation and effectiveness of the plan across time, settings and staff.*[Source Work Group]*

INDIVIDUAL SAFETY PLANS

Note: Need input about the circumstances that justify and ISP and what needs to be included, etc.

MONITORING AND CORRECTIVE ACTION

- (1) No less than annually, the commissioner shall monitor, through the review of school-reported data, the use of physical restraint, [seclusion] and time-out rooms in schools. [H.400]
- (2) The commissioner shall identify those schools in need of additional training and, when the data reflect an over-use of these interventions, shall direct the school to work with the department to develop a corrective action plan.
[H. 400]

TRAINING (NEEDS MUCH MORE WORK)

(1) Each school board and board of directors shall ensure that [core] staff are identified and trained in the use of evidence-based positive behavioral intervention and supports, including instruction in:

- (a) A continuum of prevention techniques.
- (b) A continuum of de-escalation techniques.
- (c) Environmental management strategies.
- (d) Evidenced-based methods of physical management and restraint;
- (e) Cardio-pulmonary resuscitation and first aid; and
- (e) Appropriate documentation, notification, and reporting procedures.

[Model Policy & Federal Language Combined]

Notes: Do we want State-approved training programs?

Do we want a requirement for a specific number of trained personnel in each school or program?

Do we want continuing education requirements for training and/or recertification?

Do we want licensure or certification requirements for professionals performing FBAs or consulting in the area of behavior management?